

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Welker	Team: Team # 8	CCRB Case #: 200918099	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/20/2009 4:30 PM	Location of Incident: Macy's department store at 34th Street and Broadway	Precinct: 14	18 Mo. SOL 5/20/2011	EO SOL 5/20/2011	
Date/Time CV Reported Mon, 11/23/2009 8:50 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/23/2009 8:50 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jason Rubenstein	24550	931108	PBMS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Paul Dunne	25441	922293	PBMS
2. POM Steven Hanna	20286	945203	PBMS

Officer(s)	Allegation	Investigator Recommendation
A.POM Jason Rubenstein	Abuse: PO Jason Rubenstein stopped § 87(2)(b) and § 87(2)(b)	

### Case Summary

On November 23, 2009, § 87(2)(b) filed a complaint with the CCRB over the phone (encl. 4a-4b).

On November 20, 2009, at approximately 4:30 p.m. PO Jason Rubenstein, PO Paul Dunne, and PO Steven Hanna of Patrol Borough Manhattan South approached § 87(2)(b) and § 87(2)(b) at 34<sup>th</sup> Street and Broadway in Manhattan. The following resulted:

- **Allegation A-Abuse of Authority: PO Jason Rubenstein stopped § 87(2)(b) and § 87(2)(b)**

§ 87(2)(g)

### Results of Investigation

#### Civilian Statement

##### Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

#### CCRB Statement

On December 8, 2009, the CCRB interviewed § 87(2)(b) (encl. 5a-5e). § 87(2)(b) speaks Mandarin. Interpreter Lin Chau translated this interview.

On November 20, 2009, § 87(2)(b) shopped at Macy's Department store located at 34<sup>th</sup> Street and Broadway with her friend, § 87(2)(b) bought one handbag and § 87(2)(b) bought two handbags there. After they made their purchases, they exited the store. They walked to the bus stop which is directly across the sidewalk from the Macy's entrance. They had been at the bus stop for approximately 15 minutes when PO Jason Rubenstein, PO Steven Hanna, and PO Paul Dunne of the Patrol Borough Manhattan South approached them. The officers told them to follow them into Macy's, which they did. Once inside Macy's the officers asked § 87(2)(b) for his receipt and identification, which he provided. The officers told § 87(2)(b) that his license was fraudulent. § 87(2)(b) had his wallet open while he was speaking with the officers and they saw that he had additional identification. The officers asked to see this identification, which § 87(2)(b) provided. § 87(2)(b) then tried to grab § 87(2)(b)'s wallet from the officers. The officers handcuffed § 87(2)(b) and § 87(2)(b) and took them inside the Macy's security office. The officers made them wait for approximately 10 to 20 minutes before they were released.

§ 87(2)(b) initially accepted mediation over the phone on November 30, 2009. It was later determined that mediation was not an option because § 87(2)(b) was planning to leave the country permanently at the end of December 2009.

#### Attempts to Contact Civilians

On November 30, 2009, the CCRB spoke with § 87(2)(b) over the phone (encl. 10c). § 87(2)(b) informed the CCRB that he would be leaving the country permanently on December 7, 2009. He accepted mediation and agreed for § 87(2)(b) to mediate on his behalf. On December 4, 2009, the investigation determined that mediation was no longer an option and that § 87(2)(b) wished to

proceed with an investigation. On December 4, 2009, the CCRB spoke with § 87(2)(b) over the phone and he was hesitant to provide a phone statement. § 87(2)(b) told the CCRB to call back. The CCRB called § 87(2)(b) back later that day and left a message asking to please call back. § 87(2)(b) did not respond to the CCRB and he left the country on December 7, 2009. The CCRB was unable to contact § 87(2)(b) on December 5, 2009, and December 6, 2009, because they were not weekdays. The CCRB does not have contact information for § 87(2)(b) in China.

### **NYPD Statements:**

#### **Subject Officer: PO JASON RUBENSTEIN**

- *PO Rubenstein is a § 87(2)(b)-old white male with brown hair and brown eyes. He is 5'10" tall and weighs 215 pounds.*
- *On November 20, 2009, PO Rubenstein was scheduled to work grand larceny task force with PO Hanna and PO Dunne from 1:00 p.m. to 9:35 p.m. He was dressed in plainclothes and working on foot.*

### **Memo Book**

Officer Rubinstein had the following entries in his memo book regarding this incident (encl. 6a-6b): "1550: Pickup of two Asians, credit card identity male female possible fraudulent ID and re-encoded credit card. 1700: 2 stopped inside vestibule. Male, one female. Asked for ID, male. After I identified myself as a PO, male opened the wallet after refusing to show ID several times. The ID presented was not the ID used at the register. I saw the other ID that was presented at the register in the wallet when male opened it; requested ID, male showed ID but would not let me get a closer look, at which time the female suspect attempted to take the male's ID from my hand and acted very irate, yelling, refusing to calm down. Physically threatening motions, jumping in between me and the male suspect and myself, thus causing a large crowd to gather. Both suspects were cuffed for my safety to further my investigation. 1715: 93 prepared. Asian male female immediately un-cuffed upon proper ID given and credit card was valid. Male and Female § 87(2)(b) and § 87(2)(b) Shields and ID and names were given upon request."

### **CCRB Statement**

On February 11, 2010, the CCRB interviewed PO Jason Rubenstein of Patrol Borough Manhattan South (encl. 6c-6d). On November 20, 2009, PO Rubenstein and his partners were in Macy's because there are a large number of credit card and identity theft incidents in the store during the holiday season. PO Rubenstein walked past the Coach hand bag counter and saw the sales associate behind the counter talking on the phone and holding a credit card in her hand. PO Rubenstein saw § 87(2)(b) and § 87(2)(b) in front of the counter and stood behind them. PO Rubenstein said that the credit card did not look legitimate, but he did not recall why. § 87(2)(b)'s identification did not look valid because it had a white background. In PO Rubenstein's experience, these types of identifications are fraudulent. When the credit card transaction was declined PO Rubenstein felt this was a confirmation that his suspicion about the card was correct. § 87(2)(b) and § 87(2)(b) left the Coach hand bag area. PO Rubenstein identified himself as a police officer to the cashier at the Coach counter and received a copy of the declined transaction from her.

PO Rubenstein, PO Dunne, and PO Hanna observed § 87(2)(b) and § 87(2)(b) for approximately one hour and ten minutes, following them as they walked around the store. PO Rubenstein wanted to see whether the couple would attempt to use the credit card again. § 87(2)(b) and § 87(2)(b) did not attempt to make additional purchases. PO Rubenstein stopped § 87(2)(b) and

§ 87(2)(b) as soon as they exited Macy's and escorted them back inside the store. PO Rubenstein requested § 87(2)(b)'s identification and he provided an identification which was different from the one he presented at the cash register earlier. When the § 87(2)(b) opened his wallet PO Rubenstein saw the identification he had presented to the cashier and asked to see it. When the § 87(2)(b) removed the identification and attempted to give it to PO Rubenstein § 87(2)(b) grabbed the identification. PO Rubenstein handcuffed § 87(2)(b) and § 87(2)(b) and escorted them to the Macy's security room to reduce disruption in the store. They were later released.

**Witness Officer: PO PAUL DUNNE**

- *PO Dunne is a § 87(2)(b)-old white male with brown hair and green eyes. He is 5'10" tall and weighs 180 pounds.*
- *On November 20, 2009, PO Dunne was scheduled to work grand larceny task force with PO Rubenstein and PO Hanna from 1:00 p.m. to 9:35 a.m. He was dressed in plainclothes and assigned to work on foot. PO Dunne had no entries in his memo book regarding this incident.*

**CCRB Statement**

On February 11, 2010, the CCRB interviewed PO Paul Dunne of Patrol Borough Manhattan South (encl. 7a-7d). On November 20, 2009, PO Dunne and his partners were working in the vicinity of West 34<sup>th</sup> Street and Broadway in Macy's Department store. The officers were in the vicinity of the Coach hand bag department inside of Macy's when they observed § 87(2)(b) and § 87(2)(b) at the counter. § 87(2)(b) attempted to make a purchase, but the credit card presented for the purchase was declined. PO Dunne's suspicions were raised because § 87(2)(b) and § 87(2)(b) were looking over their shoulders and looking up at the cameras.

The officers kept § 87(2)(b) and § 87(2)(b) under surveillance for approximately forty five minutes. The couple visited the coffee shop inside Macy's and then left the store. The officers stopped the couple when they exited the store. PO Rubenstein asked § 87(2)(b) for his identification. § 87(2)(b) provided an identification which was different from the identification he used at the Coach cashier. When § 87(2)(b) opened his wallet, PO Rubenstein saw the identification that was given to the cashier and asked to see it. As § 87(2)(b) went to remove the identification from his wallet, § 87(2)(b) grabbed the wallet and turned her back to PO Rubenstein. She started screaming and flailing her arms. A crowd began to form in the area that was near the exit. The officers handcuffed § 87(2)(b) and § 87(2)(b) for their safety and they were escorted to a security room inside of Macy's. The handcuffs were removed as soon as the officers determined that the identification and credit card were not fraudulent.

**Witness Officer: PO STEVEN HANNA**

- *PO Hanna is a § 87(2)(b)-old white male with brown hair and blue eyes. He is 6'0" tall and weighs 250 pounds.*
- *On November 20, 2009, PO Hanna was scheduled to work grand larceny task force with PO Rubenstein and PO Dunne from 1:00 p.m. to 9:35 p.m. He was dressed in plainclothes and assigned to work on foot. PO Hanna had no entries in his memo book regarding this incident.*

**CCRB Statement**

On February 11, 2010, the CCRB interviewed PO Steven Hanna of Patrol Borough Manhattan South (encl. 8a-8d). On November 20, 2009, in the vicinity of West 34<sup>th</sup> Street and Broadway in Macy's, PO Hanna and his partners were walking by the Coach hand bag

department when they saw § 87(2)(b) and § 87(2)(b) at the counter attempting to purchase a hand bag. The credit card was declined and the identification that was presented looked different from any that PO Hanna had seen before. The identification presented to the cashier was white and it did not look like a “typical driver’s license.” PO Hanna’s attention was drawn to the couple because he deals with credit card fraud, especially with hand bag purchases in Macy’s.

The officers followed the couple for an hour as they walked around the store. The officers approached § 87(2)(b) and § 87(2)(b) when they exited Macy’s. PO Hanna asked § 87(2)(b) and § 87(2)(b) if they would be willing to answer a few questions. When they said yes, the officers escorted them to the vestibule at the entrance of Macy’s. PO Rubenstein asked § 87(2)(b) for his identification, which he provided. The identification was different from the identification § 87(2)(b) presented at the cashier earlier. When § 87(2)(b) opened his wallet, PO Rubenstein saw the identification that § 87(2)(b) presented to the cashier and he asked to see it. At that point, § 87(2)(b) took the wallet from § 87(2)(b) and turned her back to PO Rubenstein. She started yelling and a crowd started to form. For the officer’s safety they handcuffed § 87(2)(b) and § 87(2)(b). PO Hanna said for crowd safety and to spare the couple further embarrassment they moved them to another room. They were released when PO Rubenstein determined that the identification was not fraudulent.

## **NYPD Document**

### **Stop and Frisk Reports**

The handwritten stop and frisk reports for § 87(2)(b) and § 87(2)(b) were filled out by PO Rubenstein (encl. 9a-9f). Officers observed these individuals for one hour and ten minutes. These individuals were suspected of grand larceny. Furtive movements, actions indicative of casing a location, and carrying objects in plain view used in commission of crime are the circumstances which led to the stop. Both individuals were frisked due to furtive movements and refusal to comply with officer’s directions. Additional factors which led to the stop include proximity to crime location, time of day and season corresponds to report of criminal activity, area has high incidence of reported offense of type under investigation, changing direction at the sight of an officer, and evasive responses to officer’s questions.

### **Status of Civil Proceedings**

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of March 15, 2010 with regard to the incident.

### **Civilian Criminal History**

- As of March 22, 2010, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) or § 87(2)(b) (encl. 3).

### **Civilian CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b).

### **Subject Officer CCRB History**

- PO Dunne has been a member of the service for 11 years and there are three substantiated allegations against him. In CCRB case 200103040 PO Dunne received instructions for refusal to provide name and shield. In CCRB case 200301021 PO Dunne received command discipline for offensive language and other abuse of authority.

- PO Hanna has been a member of the service for two years and there are no substantiated CCRB allegations against him.
- PO Rubenstein has been a member of the service for seven years and there are no substantiated allegations against him.

### **Conclusion**

#### **Identification of Subject Officer**

- PO Rubenstein admitted that he stopped § 87(2)(b) and § 87(2)(b). PO Rubenstein also filled out stop and frisk reports regarding these stops. Allegation A was therefore pleaded against PO Rubenstein.

#### **Allegations Not Pleaded**

A frisk is not pleaded in this case because § 87(2)(b) did not allege that she and § 87(2)(b) were frisked.

#### **Investigative Findings and Recommendations**

##### **Allegation A-Abuse of Authority: PO Jason Rubenstein stopped § 87(2)(b) and § 87(2)(b)**

According to § 87(2)(b) officers approached her and § 87(2)(b) directly outside of Macy's department store and told them to follow them into Macy's. Once inside Macy's, the officers asked § 87(2)(b) for his receipt and identification, which he provided. The officers told § 87(2)(b) that his license was fraudulent and asked to see another identification that he had in his wallet.

PO Rubenstein told the CCRB that § 87(2)(b)'s credit card did not look legitimate, but he was unable to explain why. § 87(2)(b)'s identification also did not look valid because it had a white background. According to PO Hanna, the identification did not look like a typical driver's license. PO Dunne said that § 87(2)(b) and § 87(2)(b) were looking over their shoulders and looking up at the cameras. § 87(2)(g) When § 87(2)(b)'s credit card transaction was declined, officers suspected that § 87(2)(b) was using a fraudulent credit card and identification. Officers continued to observe § 87(2)(b) and § 87(2)(b) for over an hour to see if they made any additional purchases, which they did not do. PO Rubenstein stopped § 87(2)(b) and § 87(2)(b) when they exited the store and escorted them back into the store to conduct an investigation regarding fraudulent identification.

An individual is stopped when they are physically or constructively detained by a significant interruption of movement as a result of police action. See *People v. Cantor*, 36 N.Y.2d 106 (1975) (encl. 1g). In this case PO Rubenstein approached § 87(2)(b) and § 87(2)(b) and escorted them back into Macy's to conduct an investigation regarding § 87(2)(b)'s identification. § 87(2)(b) and § 87(2)(b) were not asked, but instructed, to go back into the store with officers. This § 87(2)(g)

A police officer must have a reasonable suspicion that a person is committing, has committed, or is about to commit a crime in order to stop an individual. *People v. DeBour*, 40 N.Y.2d (1976) (encl. 1a-1b). § 87(2)(b), § 87(2)(g)

§ 87(2)(b) was visiting New York City as a tourist and he had a foreign identification. Macy's department store

is a well known location for shopping in New York City. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Team: \_\_\_\_\_

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Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

